

METROPOLITAN BANK AND TRUST COMPANY AND ROGELIO T. UY, PETITIONERS, VS. JOSE B. TAN AND REY JOHN TAN, RESPONDENTS.

G.R. No. 159934. June 26, 2008

Ponente: CARPIO, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-159934/>

CARPIO, J.:

The Case

This is a petition for review on certiorari[1] assailing the Decision dated 21 March 2003 [2] and the Resolution dated 1 September 2003[3] of the Court of Appeals (appellate court) in CA-G.R. SP No. 68523. The appellate court reversed the Decision dated 2 April 2001 [4] of the Regional Trial Court of Cagayan de Oro City (trial court) in Miscellaneous Case (MC) No. 2000-117.

The trial court granted Metropolitan Bank and Trust Company (Metrobank) a Writ of Possession over the properties covered by TCT No. T-134333, TCT No. 134331, and TCT No. 134332.

The Facts

The appellate court stated the facts as follows:

Petitioner Rey John Tan is the owner and actual possessor of a parcel of land situated at Carmen, Cagayan de Oro City, specifically described under Transfer Certificate of Title (TCT) No. T-37311 and registered with the Registry of Deeds of Cagayan de Oro City.

On the other hand, petitioner Jose B. Tan is also an owner of a parcel of commercial land situated at Lapasan, Cagayan de Oro City, duly registered under Transfer Certificate of Title (TCT) No. T-53267 of the Registry of Deeds of Cagayan de Oro City.

Private respondent Metropolitan Bank and Trust Company alleges that petitioner Jose B. Tan had been duly authorized, pursuant to a special power of attorney given by a [sic] Ariel Tan, to mortgage the commercial properties of the latter covered by Transfer Certificate of Title (TCT) Nos. T-42033 and T-42032, both registered with the Register of Deeds of Cagayan de Oro City, in favor of private respondent bank.

Subsequently, a petition for the extra-judicial foreclosure of Transfer Certificate of Title (TCT) Nos. T-37311, T-53267, T-42033, and T-42032, was filed by Metropolitan Bank and Trust Company and Rogelio T. Uy with the Office of the Provincial Sheriff of Misamis Oriental. The said petition was acted upon by public respondent Sheriff Albano Cuarto who then undertook to schedule the public auction sale of the aforementioned parcels of land on April 17, 1998. The said public auction was to be conducted in order to satisfy an alleged obligation of P48,311,003.39 that were all secured by real estate mortgages over the aforementioned lots. The subject parcels of land were auctioned off by public respondent Albano Cuarto, as scheduled.

Prior to the date of the auction sale, or on April 16, 1998 to be exact, petitioners Jose B. Tan and his wife, Eliza Go Tan, filed an action to "Remove Cloud of Doubt on Title, Injunction with prayer for issuance of a writ of preliminary injunction or temporary restraining order," before the Regional Trial Court of Misamis Oriental, Branch 38, docketed as Civil Case No. 98-225, entitled "JOSE B. TAN AND ELIZA GO TAN, plaintiffs, versus METROPOLITAN BANK AND TRUST COMPANY, ROGELIO T. UY and ALBANO L. CUARTO,

as Sheriff IV, Office of the Provincial Sheriff of Misamis Oriental, defendants."

In a Decision, dated March 5, 2001, the court a quo rendered the following pronouncement, the dispositive portion of which is hereby quoted as follows:

- a) Declaring that, because of the fact that plaintiff Eliza G. Tan did not give her consent to all the real estate mortgages annotated at the back of her title, TCT No. T-53267, of the Registry of Deeds for Cagayan de Oro, all said mortgages are null and void ab initio;
- b) Declaring that, because plaintiff Jose B. Tan did not execute the real estate mortgages annotated at the back of his title, TCT No. T-53267, of the Registry of Deeds of Cagayan de Oro, all said mortgages are null and void;
- c) Declaring that extra-judicial foreclosure proceedings taken by the defendant-sheriff, including the sheriff's certificate of sale, as null and void;
- d) Making permanent the writ of preliminary injunction against the defendant sheriff, and the office of the provincial Sheriff of Misamis Oriental, enjoining and restraining them, their agents, and their representatives from issuing a final certificate of sale in favor of defendant METROBANK covering the parcel of land covered by TCT No. T-53267;
- e) Ordering the removal of the cloud on the title, TCT No. T-53267, of the Registry of Deeds of Cagayan de Oro, and the cancellation of all the entries of the real estate mortgages and amendment of mortgages annotated at the back of TCT No. T-53267 of the Registry of Deeds for Cagayan de Oro City;
- f) Absolving the plaintiffs spouses from financial liability for the null and void real estate mortgages;
- g) Declaring the principal obligations obtained by Rey John Tan through the annulled real estate mortgages as FULLY PAID by him;

xxx xxx xxx

SO ORDERED.

Notwithstanding the aforementioned pronouncement of the Regional Trial Court of Misamis Oriental, Branch 38, private respondents METROBANK and Rogelio T. Uy filed, on January 20, 2001, an Ex Parte Petition for a writ of possession docketed under Miscellaneous Case No. 2000-117 before Branch 21, of the same Regional Trial Court concerning three (3) parcels of land covered by Transfer Certificates of Title (TCT) Nos. T-42033, T-42032, T-37311 which had been incidentally cancelled by Transfer Certificates of Title (TCT) Nos. T-13432 [sic], T-13431 [sic], and T-13433 [sic].

Since herein petitioners were not notified of the hearing set by the court in Miscellaneous Case No. 2000-117, private respondent METROBANK was allowed to present its evidence ex parte on February 8, 2001, before the Branch Clerk of Court of Branch 21.

On April 2, 2001, the Regional Trial Court of Misamis Oriental, Branch 21, rendered its Decision in Miscellaneous Case No. 2000-117, the dispositive portion of which reads:

WHEREFORE, petitioner having sufficiently established to the satisfaction of this Court all the allegations in its petition and finding the petition to be deserving of merit, the same is hereby granted. Accordingly, a Writ of Possession over the properties covered by TCT No. T-134333, TCT No. T-134331 and TCT No. T-134332 is hereby ordered issued in favor of the petitioner against any and all occupants/possessor of the aforementioned properties.

SO ORDERED.

On July 10, 2001, a writ of possession, in Miscellaneous Case No. 2000-117 involving the three (3) parcels of land covered by Transfer Certificates of Title (TCT) Nos. T-13432 [sic], T-13431 [sic], and T-13433 [sic], was issued by the Branch Clerk of Court, to wit:

Pursuant to the Decision of the Honorable Court, dated April 2, 2001, you are hereby commanded to place in possession the herein petitioner METROPOLITAN BANK TRUST CO. over a parcel of land including all improvements thereon, covered by Transfer Certificates of Title Nos. T-13433 [sic], T-13431 [sic], and TCT No. T-13432 [sic] and cause REY JOHN TAN and/or any other person thereof to vacate from the premises of the said property.

The Chief of Police of Cagayan de Oro City or any of his duly authorized representatives are hereby directed to assist the Sheriff to enforce this Writ of Possession.

Witness the Hon. ARCADIO D. FABRIA presiding Judge of this Court, this 10th day of July.

On even date, or on July 10, 2001, to be exact, public respondent Sheriff IV Albano L. Cuarto issued a "NOTICE TO VACATE" to petitioner Rey John Tan regarding the three (3) lots now covered by TCT Nos. T-13433 [sic], T-134331, and T-13432 [sic].

In an attempt to forestall the implementation of the assailed writ of possession, petitioner Rey John Tan, and Ariel Tan, moved for the reconsideration of the Decision dated April 2, 2001 granting the writ prayed for, and to quash the writ of possession as well as the notice to vacate. Respondent judge granted herein petitioners time to consolidate their exhibits. Among the five (5) exhibits presented by the herein petitioners, is a copy of the Decision, dated March 5, 2001, of the Regional Trial Court of Misamis Oriental, Branch 38, declaring the alleged real estate mortgages and extra-judicial foreclosure proceedings as null and void ab initio and/or null and void.

The said Motion was denied in an Order, dated November 21, 2001, of the Regional Trial Court of Misamis Oriental, Branch 21, the dispositive portion of which reads:

WHEREFORE, premises considered, oppositors' motion for reconsideration and motion to quash writ of possession and notice to vacate are hereby denied for want of merit. Consequently, petitioner's motion to break open is granted. Petitioner is thus allowed to break open the foreclosed property in order for the latter to be placed in complete control and possession thereof.

SO ORDERED.

The motion for the reconsideration of the Order, dated November 21, 2001, was likewise denied in another Order of the said Court on December 13, 2001.[5]

Rey John Tan and Jose B. Tan (respondents) filed an appeal before the appellate court. They questioned the ruling of the trial court because in Civil Case No. 98-225, a co-equal court declared all the real estate mortgages void. They stated that a writ of possession should not issue from a void mortgage.

-
-
-

The Appellate Court's Ruling

In its Decision dated 21 March 2003, the appellate court reversed the decision of the trial court in MC No. 2000-117. The appellate court stated that there is no factual and legal basis to uphold the trial court's ruling granting the issuance of a writ of possession in favor of Metrobank because a co-equal court declared the real

estate mortgages void. The appellate court ruled that the issuance of a writ of possession amounted to interference with the judgment of another court of concurrent jurisdiction. The dispositive portion of the Decision reads:

WHEREFORE, the instant petition for certiorari is GRANTED. The Decision, dated April 2, 2001, of the Regional Trial Court of Misamis Oriental, in Miscellaneous Case No. 2000-117 entitled, "In Re: Petition for Writ of Possession in TCT No. 13433 [sic], formerly registered in the name of REY JOHN TAN, TCT Nos. 13431 [sic] and T-13432 [sic] formerly registered in the name of ARIEL TAN," granting the issuance of a writ of possession in favor of private respondents Metropolitan Bank and Trust Company and Rogelio T. Uy, is hereby REVERSED and SET ASIDE. Costs against private respondents.

SO ORDERED.[6]

Metrobank asked the appellate court to reconsider its decision. Metrobank stated that there was no grave abuse of discretion in the issuance of the writ of possession and that the decision in MC No. 2000-117 did not interfere with the proceedings of a co-equal court.

In resolving Metrobank's motion for reconsideration, the appellate court took note of the general rule that the "pendency of a separate civil suit questioning the validity of the mortgage cannot bar the issuance of the writ of possession because the same is a ministerial act of the trial court." The appellate court further stated that the present case falls under the exception to the general rule because it is attended with equitable considerations. The ruling in Civil Case No. 98-225 is presumed regular, although the pronouncement of invalidity of the mortgages is not yet definitive as the ruling is still under appeal. The appellate court then amended the dispositive portion of its 21 March 2003 decision to read as follows:

WHEREFORE, under paragraph (d) of the instant petition praying for "such other relief and remedy deemed just and equitable in the premises," the Court hereby orders that the decision dated 02 April 2001 insofar as its factual and legal basis is AFFIRMED but its order directing that a writ of possession of the properties covered by TCT No. T-13433 [sic], TCT No. T-13431 [sic] and TCT No. 13432 [sic] be issued is held in abeyance until a final decision by the proper appellate court is rendered in the appeal of Civil Case No. 98-225.

SO ORDERED.[7]

Hence, this appeal.

The Issues

Metrobank questions the appellate court's decision and resolution by raising procedural and substantive issues:

- The lower court erred in not dismissing the petition on the ground that the respondents have squandered the remedy of appeal and that the extraordinary remedy of certiorari cannot be a substitute for a lost appeal.
- The lower court erred in not dismissing the petition on the ground that respondents have two adequate remedies in Section 8, Act 3135 and in Civil Case No. 98-225.
- The lower court erred in not dismissing the petition on the ground that the trial court did not gravely abuse its discretion.
- The lower court erred in holding in abeyance the implementation of the writ to await the outcome of Civil Case No. 98-225.[8]

The Ruling of the Court

We find the petition meritorious. As the errors raised are interrelated, we shall discuss them jointly.

Issuance of a Writ of Possession

Respondents theorize that the issuance of a writ of possession rests on the validity of the mortgage. Respondents thus rely heavily on the ruling in Civil Case No. 98-225, where the trial court declared all the real estate mortgages void and ruled that Rey John Tan had fully paid the obligations related to the real estate mortgages. The appellate court, in CA G.R. CV No. 70742, agreed with respondents' theory.

However, our ruling in *Metropolitan Bank and Trust Company v. Tan*,^[9] promulgated on 30 November 2006, set aside the ruling of the appellate court in CA G.R. CV No. 70742 and dismissed Civil Case No. 98-225. We ruled that the respondents in that case failed to prove that the property in issue is conjugal. Moreover, we found that the debit memos represented payment only in the bank's book of entries but did not actually involve the payment or settlement of the original obligation. We thus declared that the extrajudicial foreclosure and subsequent sale of the mortgaged property covered by the title in question are valid. Our ruling in G.R. No. 163712 knocks off a leg from respondents' theory that the issuance of a writ of possession upon a property is dependent upon the validity of the mortgage.

Notwithstanding respondents' theory, no discretion is left to the trial court in the issuance of a writ of possession. Sections 7 and 8 of Act 3135 read:

Section 7. In any sale made under the provisions of this Act, the purchaser may petition the [Regional Trial Court] of the province or place where the property or any part thereof is situated, to give him possession thereof during the redemption period, furnishing bond in an amount equivalent to the use of the property for a period of twelve months, to indemnify the debtor in case it be shown that the sale was made without violating the mortgage or without complying with the requirements of this Act. Such petition shall be made under oath and filed in form of an ex-parte motion in the registration or cadastral proceedings if the property is registered, or in special proceedings in the case of property registered under the Mortgage Law or under section one hundred and ninety-four of the Administrative Code, or of any other real property encumbered with a mortgage duly registered in the office of any register of deeds in accordance with any existing law, and in each case the clerk of the court shall, upon the filing of such petition, collect the fees specified in paragraph eleven of section one hundred and fourteen of Act Numbered Twenty-eight hundred and sixty-six, and the court shall, upon approval of the bond, order that a writ of possession issue, addressed to the sheriff of the province in which the property is situated, who shall execute said order immediately.

Section 8. The debtor may, in the proceedings in which possession was requested, but not later than thirty days after the purchaser was given possession, petition that the sale be set aside and the writ of possession cancelled, specifying the damages suffered by him, because the mortgage was not violated or the sale was not made in accordance with the provisions hereof, and the court shall take cognizance of this petition in accordance with the summary procedure provided for in section one hundred and twelve of Act Numbered Four hundred and ninety-six; and if it finds the complaint of the debtor justified, it shall dispose in his favor of all or part of the bond furnished by the person who obtained possession. Either of the parties may appeal from the order of the judge in accordance with section fourteen of Act Numbered Four hundred and ninety-six; but the order of possession shall continue in effect during the pendency of the appeal.

The applicable law thus states that it is the court's ministerial duty to issue a writ of possession in favor of the purchaser of the mortgaged realty during the period of redemption. The trial court committed no grave abuse of discretion as no exercise of discretion is required.^[10] It is ministerial upon the court to issue a writ of possession in favor of a purchaser, provided that a proper motion is filed, a bond is approved, and no third person is involved.^[11] The pendency of an action to annul the mortgage is not a ground for non-enforcement of the writ of possession.^[12] The ministerial duty of the trial court does not become discretionary upon the filing of a complaint questioning the mortgage.

Finally, we agree with Metrobank's contention that the trial court's order granting the writ of possession is final.

The proper remedy for respondents is an appeal and not a petition for certiorari. As long as the court acts within its jurisdiction, any alleged errors committed in the exercise of its discretion will amount to nothing more than mere errors of judgment, correctable by an appeal if the aggrieved party raised factual and legal issues; or a petition for review under Rule 45 of the Rules of Court if only questions of law are involved.[13]

WHEREFORE, we GRANT the petition. We SET ASIDE the Decision dated 21 March 2003 and the Resolution dated 1 September 2003 of the Court of Appeals in CA-G.R. SP No. 68523.

SO ORDERED.

Puno, C.J. (Chairperson), Corona, Azcuna, and Leonardo-De Castro., JJ., concur.

[1] Under Rule 45 of the 1997 Rules of Civil Procedure.

[2] Rollo, pp. 26-36. Penned by Associate Justice Teodoro P. Regino, with Associate Justices Buenaventura J. Guerrero and Mariano C. Del Castillo, concurring.

[3] Id. at 58-59. Penned by Associate Justice Buenaventura J. Guerrero, with Associate Justices Eubolo G. Verzola and Mariano C. Del Castillo, concurring.

[4] CA rollo, pp. 85-86. Penned by Judge Arcadio D. Fabria.

[5] Rollo, pp. 27-31.

[6] Id. at 35.

[7] Id. at 59.

[8] Id. at 15-16.

[9] G.R. No. 163712, 30 November 2006, 509 SCRA 383.

[10] See *De Gracia v. San Jose*, 94 Phil. 623 (1954).

[11] *PNB v. Hon. Adil, etc., et al.*, 203 Phil. 492, 499 (1982).

[12] *PNB v. Hon. Adil, etc., et al.*, 203 Phil. 492 (1982).

[13] *San Fernando Rural Bank v. Pampanga Omnibus Development Corporation and Dominic G. Aquino*, G.R. No. 168088, 4 April 2007, 520 SCRA 564.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.